

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM**

### **(MEMORANDUM NO.3)**

#### **UK INFRASTRUCTURE BANK BILL**

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum (LCM) must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The UK Infrastructure Bank Bill (“the Bill”) was introduced in the House of Lords on 11 May 2022. The creation of a UK infrastructure bank (“the Bank”) was first announced by the Chancellor at the Spending Review 2020. The Bank was launched on a non-statutory basis on 17 June 2021, and has already begun making investments.
3. I laid an LCM on 25 May 2022 and addressed provisions in the Bill as introduced.
4. I laid a Supplementary LCM before the Senedd on 8 July which addressed amendments passed during its passage through the House of Lords.
5. Amendments to the provisions of the Bill were tabled for consideration at Committee Stage in the House of Commons on 22 November 2022, during which UK Government amendments were agreed. These amendments make provision falling within the legislative competence of the Senedd, which this supplementary legislative consent memorandum addresses.
6. Committee Stage in the House of Commons concluded on 22 November 2022.
7. The current version of the Bill alongside details of all amendments can be found on the UK Parliament website: [UK Infrastructure Bank Bill \[HL\] - Parliamentary Bills - UK Parliament](#)
8. Welsh Government has through discussions with UK Government sought amendments relating to the remit of the bank in areas of devolved competence to ensure devolution is respected. The majority of the amendments agreed at Committee Stage in the House of Commons relate to these discussions.

#### **Policy Objectives**

9. The UK Government's stated policy objectives of the Bill are to set up the Bank to help tackle climate change and to support regional and local economic growth by providing access to financial instruments, including loans to local authorities to enable investment in infrastructure. It will operate on a UK-wide basis.

#### **Summary of the Bill**

10. The Bill is sponsored by HM Treasury.

11. The UK Government's stated purpose of this Bill is to place the UK Infrastructure Bank ('the Bank') on a statutory footing. The Bank is an operationally independent institution wholly owned by government.

12. By placing the Bank on a statutory footing, the Bill seeks to:

- a) confirm and give statutory force to the Bank's objectives and activities;
- b) ensure the Bank is a long-lasting institution;
- c) create statutory forms of transparency, accountability and governance for the Bank;
- d) remove legal barriers to the Bank undertaking direct lending to local authorities; and
- e) grant specific powers to the Treasury to provide financial assistance to the Bank.

### **Territorial extent and application**

13. The Bill extends and applies to the whole of the United Kingdom.

14. Infrastructure investment is a mixture of reserved and devolved competence. Matters relating to energy, cross-border rail and digital communications are cases where investment in infrastructure is likely to fall within reserved competence. Other matters such as rail, ports or bridges within a single devolved country or area are likely to fall within the legislative competence of the Senedd.

### **Amendments agreed at the House of Commons Committee Stage for which consent is required**

15. As stated in the initial LCM, consent of the Senedd is required for the entirety of the Bill as the Senedd has competence to legislate in the same or similar terms in relation to Wales.

16. Details of all amendments considered at Committee Stage including their references, specific drafting and whether they were agreed can be found on the UK Government website below.

[https://publications.parliament.uk/pa/bills/cbill/58-03/0140/amend/ukinfra\\_pro\\_pbc\\_1122.pdf](https://publications.parliament.uk/pa/bills/cbill/58-03/0140/amend/ukinfra_pro_pbc_1122.pdf)

17. Note, this SLCM does not consider those that were not agreed.

18. The agreed amendments are set out below.

### **Clause 2**

#### **Original clause:**

19. *Clause 2 – Objectives and activities*

20. *This specifies what the Bank's objectives and activities are to be. The objectives of the Bank are to help tackle climate change and to support economic growth. The activities of the Bank are to provide financial assistance to projects relating to infrastructure (to include water, electricity, gas, telecommunications, sewerage, railways (including rolling stock), roads or other forms of transport and climate*

*change), provide loans to public authorities for such projects and to provide advisory and other support services for such projects. The above activities, and the definition of what encompasses 'infrastructure' for the purposes of such activities, may be changed by the Treasury through regulations made by statutory instrument.*

21. Consent is required – the Senedd can legislate to confer these functions (which, as above, themselves relate to devolved areas of law) on a body it creates.

### **Agreed amendments to clause 2:**

#### Amendment Gov 8

22. This amendment, and Amendment 9, would clarify that the Bank can provide loans to public authorities other than local authorities and Northern Ireland departments (as well as to persons other than public authorities).

#### Amendment Gov 1

23. This amendment would remove the reference to “structures underpinning the circular economy, and nature-based solutions,” from the definition of “infrastructure”.

#### Amendment Gov 2

24. This amendment would remove subsection (6), which was inserted by the House of Lords.

#### Amendment Gov 3

25. This amendment would require the Treasury to consult the relevant devolved authority before making regulations under clause 2(7) that would contain provision within the legislative competence of the authority in question.

#### Consent required for agreed amendments to clause 2

26. Consent required - the proposed amendments do not impact the competence advice set out above for the original clause and, as the original clause is 'relevant provision' and within the scope of SO 29, consent is required for these amendments.

### **Clause 3**

#### **Original clause:**

*27. Clause 3 – Strategic priorities and plans*

*28. Clause 3 states that the Treasury must prepare a statement of strategic priorities for the Bank and allows that the Treasury may revise or replace such statement. Further, it states that the Bank must secure that its articles of association provide for the Bank to publish and act in accordance with strategic plans which reflect the Treasury's statement, and to update those plans whenever the Treasury revises or replaces its statement.*

29. Consent is required - This clause deals with the corporate governance of an existing body corporate. We have reviewed the above provision against the reserved matters in Schedule 7A of GOWA and the restrictions in Schedule 7B of GOWA and have concluded that (as the objectives and activities of said body corporate are within competence – see analysis of clause 2 above) there is nothing contained therein which would render such a provision outside the legislative competence of the Senedd should it be included in an Act of the Senedd.

### **Agreed amendments to clause 3:**

#### Amendment Gov 4

30. This amendment would require the Treasury to consult the relevant devolved authority before including in a statement of strategic priorities for the Bank any provision which the Treasury proposes to include in the statement and which concerns a subject matter within the legislative competence of the authority in question.

31. Consent required - the proposed amendment does not impact the competence advice set out above for the original clause and, as the original clause is 'relevant provision' and within the scope of SO 29, consent is required for these amendments.

### **Clauses 6 and 7**

#### **Original clause:**

32. *Clauses 6 (Annual accounts and reports) and 7 (Directors: appointment and tenure)*

33. *Clause 6 states that the Bank's directors must, as soon as reasonably practicable after complying with section 441 of the Companies Act 2006 in relation to a financial year, deliver to the Treasury a copy of the accounts and reports which they are required to deliver. Further, the clause obliges the Treasury to lay a copy of those accounts and reports before Parliament.*

34. *Clause 7 deals with corporate governance issues relating to the appointment and tenure of directors for the Bank.*

35. Consent required - These clauses deal with the corporate governance of an existing body corporate and as such, we have concluded that (as the objectives and activities of said body corporate are within competence – see analysis of clause 2 above) they would be within the legislative competence of the Senedd should they be included in an Act of the Senedd relating to a company set up by the Welsh Ministers.

### **Agreed amendments to clauses 6 and 7:**

#### Amendment Gov 5

36. This amendment would require the Bank's Board to include one or more directors with responsibility for ensuring that the Board considers the interests of the appropriate national authorities when making decisions.

37. Consent required - the proposed amendment does not impact the competence advice set out above for the original clause and, as the original clause is 'relevant provision' and within the scope of SO 29, consent is required for these amendments.

### **Clauses 10 and 11**

#### **Original clause:**

38. *Clause 10 (Interpretation) and 11 (Extent and short title)*

39. *Clauses 10 and 11 define the defined terms used in Bill, and specify the extent of the 'Act', the date on which it is to come into force and its short title.*

40. Consent is required - as they are incidental to the remainder of the Bill, it is concluded that consent is required.

#### **Agreed amendments to clauses 10 and 11:**

##### Amendment Gov 6

41. This amendment would define "appropriate national authority".

##### Amendment Gov 9

42. This amendment is consequential on the change made to clause 2 as described in paragraph 22 above (it provides the definition of the term 'public authorities' as is used in that amendment).

##### Amendment Gov 7

43. This amendment would remove the privilege amendment inserted by the House of Lords.

#### Consent required for agreed amendments to clauses 10 and 11

44. Consent required - the proposed amendments do not impact the competence advice set out above for the original clause and, as the original clause is 'relevant provision' and within the scope of SO 29, consent is required for these amendments.

#### **UK Government view on the need for consent**

45. The UK Government's view on the need for consent remains the same as outlined in the first LCM tabled on 25 May 2022.

#### **Welsh Government's Current Policy Position**

46. The Bill as initially introduced provided no role for the Senedd or the Welsh Government in the governance of the Bank, while reserving certain activities for Parliament, the Chancellor and HM Treasury.

47. Clause 2 allows the Treasury to amend the Bank's activities and the definition of infrastructure. Through amendment Gov 3 there is a statutory obligation on the Treasury to consult Welsh Ministers when exercising these powers.
48. Similarly, Clause 3 allows the Treasury to revise or replace the statement of strategic priorities for the Bank. Through amendment Gov 4 there is a statutory obligation on the Treasury to consult Welsh Ministers when exercising these powers.
49. Amendment Gov 5 states that the Board must appoint one or more Directors to consider the interests of the national authorities. This will provide a statutory duty to liaise between at least one Director of the Board and the Welsh Ministers, helping ensure that the interests of Wales are considered on the Board.
50. The three amendments outlined above provide a statutory role for the Welsh Ministers or consideration of the interests of Wales in the three main areas where the UK Government has specific powers. While the outcome does not achieve all of my objectives, I believe that the UK Government amendments represent a reasonable compromise which will enable the interests of Wales and the Welsh Government to be reflected through the workings of the Bank.

## **Financial Implications**

51. There are no direct financial implications arising from this memorandum.

## **Conclusion**

52. As set out above, the legislative consent of the Senedd Cymru is required for all amendments to the Bill.
53. The Bill has been amended to better reflect the interests of Wales and the Welsh Government and to better respect the devolution settlement. I therefore now recommend consent is given to the Bill. In due course, I intend therefore to recommend that the Senedd consents to the passing of this Bill.

**Rebecca Evans MS**  
**Minister for Finance and Local Government**  
**30 November 2022**